UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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MZM REAL ESTATE CORP.,

COMPLAINT

Plaintiff,

-against-

SALPETER GITKIN LLP, JAMES P. GITKIN and JOSEPH H. ROSE,

Defendants.
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Plaintiff, by its attorneys WILKOFSKY, FRIEDMAN, KAREL & CUMMINS, as and for its Complaint, herein alleges the following upon information and belief:

JURISDICTION

FIRST: Jurisdiction is conferred on this Court by virtue of the provision of 28 U.S.C. §1332 as hereinafter more fully appears.

SECOND: Venue properly lies in this District, pursuant to 28 U.S. Code § 1391.

PARTIES

THIRD: At all times hereinafter mentioned, Plaintiff, MZM REAL ESTATE CORP., was and still is a business corporation duly authorized to conduct business within the State of New York.

FOURTH: Upon information and belief, at all times herein mentioned, Defendant, SALPETER GITKIN LLP,(hereinafter"SALPETER") was and still is a limited liability corporation duly authorized to conduct business within the State of Florida.

FIFTH: Upon information and belief, at all times herein mentioned, SALPETER was a law firm with members and associates licensed to practice law in the State of Florida.

SIXTH: Upon information and belief, at all times herein mentioned, Defendant, JAMES P. GITKIN (hereinafter "GITKIN") was and is a natural person over the age of eighteen (18) years, and is a resident of the State of Florida.

SEVENTH: Upon information and belief, at all times herein mentioned GITKIN was a partner at SALPETER.

EIGHTH: Upon information and belief, at all times herein mentioned, Defendant, JOSEPH H. ROSE(hereinafter "ROSE") was and is a natural person over the age of eighteen (18) years, and is a resident of the State of Florida.

NINETH: Upon information and belief, at all times herein mentioned ROSE was a partner at SALPETER.

TENTH: On or about April 25, 2014, the Plaintiff retained Defendants to represent its interest in the prosecution of an Insurance claim against Tower Insurance Company as a result of Superstorm Sandy.

ELEVENTH: On or about November 21, 2014, almost seven months after being retained, Defendants commenced a lawsuit entitled MZM Real Estate Corporation v. Tower Group, Inc., and The Standard Fire Insurance Company in the Supreme Court of New York, County of New York under Index No.: 606244/14, (hereinafter "ACTION 1") which was one month after the two-year anniversary of

Hurricane Sandy and beyond the deadline of the policy's two year suit provision.

TWELFTH: Thereafter ACTION 1 was transferred to the United States District Court for the Eastern District of New York under Docket Number 15-cv-1814.

THIRTEENTH: On May 6, 2015 GITKIN and ROSE applied to United States District Court for the Eastern District of New York to be admitted pro hac vice in ACTION 1. The Court granted their application on May 11, 2015.

FOURTEENTH: The action was commenced against the wrong party (Tower Group, Inc.) whereas the policy was issued by Tower Insurance Company of New York (hereinafter "TOWER"). No action was commenced against the issuing insurer by Defendants at anytime.

FIFTEENTH: An appraisal pursuant to the policy had been demanded by Plaintiff based upon a request dated October 28, 2013, which appraisal resulted in an award in the amount of $170,129.96 dated January 30, 2015.

SIXTEENTH: At no time did Defendants request, seek or obtain an extension to file suit from TOWER in order to preserve Plaintiff's claims and a subsequent appraisal award.

SEVENTEENTH: The aforementioned ACTION 1 was discontinued without prejudice pursuant to stipulation.

EIGHTEENTH: A new action was commenced in Supreme Court, New York County entitled MZM REAL ESTATE CORP. v. TOWER INSURANCE

COMPANY OF NEW YORK, Index No.:452741/2015 (hereinafter "Action 2") in an effort to enforce the appraisal award.

NINETEENTH: On April 12, 2017, Judge Shlomo Hagler of the Supreme Court of the State of New York issued an Order dismissing Action 2 against Tower Insurance Company.

TWENTIETH: The Order provided that the dismissal of the action against Tower Insurance Company was based on its failure to commence an action within the two-year suit limitation period pursuant to the insurance policy.

TWENTY-FIRST: As such, Defendants' failure to commence suit within the two-year suit limitation period pursuant to the insurance policy was the basis upon which dismissal of the Complaint was granted.

TWENTY-SECOND: As a result of the Order's dismissal of the Action 2 against Tower Insurance Company, the Plaintiff is barred from pursuing its insurance claim against Tower Insurance Company.

TWENTY-THIRD: As a result thereof, Plaintiff has sustained a loss in at least the sum of One Hundred and Seventy Thousand, One Hundred and Twenty Nine Dollars ($170,129.96) 96/100 and has incurred legal fees, costs, and additional damage due to the malpractice of Defendants in excess of Seventy Five Thousand ($75,000.00)

WHEREFORE, Plaintiff demands judgement against Defendants in at least the sum of Two Hundred and Forty Five Thousand, One

Hundred and Thirty($245,130.00) Dollars together with interest thereon from October 29, 2012, attorneys fees and the costs and disbursement of this action.

Dated: New York, New York
May 23, 2017

Yours, etc.,

WILKOFSKY FRIEDMAN,
KAREL & CUMMINS

By: ______________________
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